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Tenant protection legislation

**new
directions
for discussion**

Tenant protection legislation

new directions for discussion

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Nouvelles orientations
Document de consultation

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Message from the Minister

The Mike Harris government knows there is trouble in the Ontario rental housing market.

We know there is trouble because we have been listening to what people have been telling us. We have also been looking at the hard, cold facts. Landlords have no incentive to invest in their own buildings, which are becoming more and more run down. Builders are not building new rental accommodation, so tenants in some of our larger cities have little choice in where they live. And taxpayers cannot afford to have the government spend more and more money on social housing because the private sector has no interest in investing in rental accommodation.

We also know that tenants must be protected from unfair rent increases and evictions without just cause.

There are many aspects of rent control that work — those we will not change. There are many aspects of rent control that need to be improved — those we will improve. Additionally, there are many, many changes required to fix problems in maintenance, the landlord-tenant relationship, the dispute-resolution system, care homes, mobile home parks and land lease communities, and other areas of concern. Those we will fix.

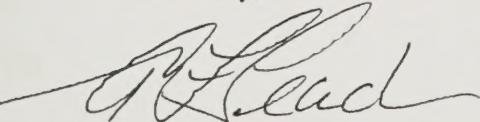
Tenants have opinions about what should be changed and what should remain. Landlords also have opinions on what reform is needed. Not surprisingly, the opinions of tenants and landlords are often quite different. On many issues, the views of tenants and landlords are polarized.

Most tenant organizations have told us they like the protection provided by the current rent control system and, in fact, would like an even stricter system. Landlords and developers have told us that they will not invest in rental housing unless the system is changed and the rules are loosened.

It is our job, as the government, to strike a balance and bring in a system that works for tenants, landlords and Ontario taxpayers. We believe we have found that balance in our proposed tenant-protection package.

We want to know what you think. Please read the consultation paper, participate in the public meetings that will be held across the province this summer, and send us your written comments. We want to hear from you.

Sincerely,



Al Leach

Public consultation meetings

There will be public consultation meetings held over the summer. Details of the timing and location will be announced shortly.

Written comments are also welcome. They should be received no later than **Friday, August 30, 1996**. Please forward submissions to:

The Honourable Al Leach
Minister of Municipal Affairs and Housing
"Tenant Protection Legislation – New Directions for Discussion"
Ministry of Municipal Affairs and Housing
777 Bay Street
Toronto, Ontario
M5G 2E5

If you would like additional copies of this consultation paper at no charge, please contact the rent control office in your area or contact

Customer Assistance
Communications Branch
Ministry of Municipal Affairs and Housing
17th Floor, 777 Bay Street
Toronto, Ontario
M5G 2E5
(416) 585-7041

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Tenant protection legislation – new directions for discussion

Goals for a New Tenant-Protection System

The ministry wants to reform the tenant-protection system to

- protect tenants from unfair or double-digit rent increases, evictions and harassment and to provide strong security of tenure
- focus protection on tenants rather than on units
- create a better climate for investment in maintenance and new construction, therefore creating jobs
- improve enforcement of property maintenance standards
- provide a faster, more accessible system to resolve disputes between landlords and tenants
- deliver a more cost-effective administration with less red tape

The Ministry's Proposed Tenant-Protection Package

Protection from unfair rent increases

Tenants need continued protection from unfair rent increases. Parts of the current rent control legislation should be preserved; other parts need to be improved so that the system can work better. One significant problem with the current system is that it discourages capital investment, both in existing buildings and in new supply. The result is that many tenants are living in buildings that desperately need repair work. Because new buildings are not being built, tenants cannot easily find another apartment.

Example

Darcy, a landlord, has made major repairs to his building's balconies. He knows this year's annual guideline is 2.8 per cent. But he needs more than that to pay for the repairs. So he makes an application for an above-guideline rent increase. Based on these costs, the landlord obtains a two per cent increase above the guideline. Therefore he could increase his rent that year by 4.8 per cent.

The proposed tenant-protection package provides strong tenant protection and, at the same time, removes barriers to new investment.

The following points are the main rent control elements of the proposed tenant-protection package:

- The current rent control guideline formula will be retained for sitting tenants. The 1996 guideline is 2.8 per cent. It will be about the same in 1997.
- Rent increases for sitting tenants will continue to be limited to once a year with at least 90 days' notice.
- Landlords will still require permission to raise rents above guideline. The grounds for above-guideline increases will continue to be limited to capital expenditures and increases in extraordinary operating costs for municipal taxes and utilities.
- Capital expenditure increases will be capped at four per cent above the guideline and the two-year carry forward provision will be continued. Capital expenditures need to be capped to avoid the problems of the 1986-1990 system, when some tenants experienced rent increases of 30, 40, or even 50 per cent.
- Rent increases related to extraordinary operating costs will not be capped (i.e. taxes and utilities). Landlords have little or no control over these costs and the resulting rent increases tend to be very low.

Example

Laurie, a landlord, closes down the building swimming pool. Connor thinks his rent should be reduced because this service is no longer provided and he makes a rent reduction application. Based on the landlord's previous costs of providing the swimming pool, Connor's rent is reduced by four per cent.

• The right of tenants to make a rent reduction (or abatement) application at any time will be preserved. The grounds for decreases will be inadequate maintenance, reduced or withdrawn services and operating cost decreases for municipal taxes.

- Tenants will continue to be able to make applications regarding illegal rent increases and illegal charges.
- When a unit is vacated, the landlord will negotiate the incoming tenant's rent without regulatory restriction. Rent guidelines will once again apply when the unit is re-rented to a new tenant.

- Rent guidelines will not apply to new construction.
- To simplify administration, the ministry **will no longer require** that
 - costs no longer borne be calculated for capital expenditures
 - landlords include operating cost information with subsequent notices of rent increase after an above-guideline increase has been approved
 - decision-makers supply a written explanation of reasons for every rent-control decision issued - they will now be supplied only on request
- Landlords and tenants will be able to negotiate above-guideline increases up to the level of the cap; for example, if the tenant volunteers to pay for a capital improvement or a new service.
- The Rent Registry will be eliminated and maximum rent will no longer be calculated, simplifying administration and saving taxpayers money. Maximum rents will be frozen. Landlords' rights to raise rents to the maximum will be removed when the unit first becomes vacant.

Other Issues for Discussion

How should the allowance for capital expenditures be calculated?

Should there be an eligibility test for capital expenditures?

How should reductions for inadequate maintenance and withdrawal of services be calculated? What should the time limitations be?

How should extraordinary operating cost increases and decreases be calculated?

Maintenance

Tenants expect that for their rent they will have well-maintained and safe homes. On balance, most landlords look after their buildings. However, from time to time there are serious health and safety problems that go unremedied.

The current system does not do enough to ensure that buildings are kept in good repair. It doesn't create any incentives for landlords to put money into maintenance and the tools for enforcing property standards are inadequate. The system is a lengthy, bureaucratic and expensive process, making it difficult to deal with the most serious violators.

The proposed tenant-protection package will encourage investment in

Example

Juan's rent will continue to go up by the guideline for as long as he stays in his apartment. When he leaves, however, the landlord can agree on a new market rent with his next tenant. Once the new tenant starts living in her new apartment, the rent once again comes under guideline for as long as she stays.

Example

Yori, a tenant, wants new carpeting and renovations to the bathroom in her apartment. She sits down with John, her landlord, and they negotiate the work to be done and, based on that, agree to a rent increase to cover costs. All they have to do is sign an agreement form. No application for approval by the government is required. Under the current system, this type of agreement would not be allowed.

maintenance. For example, allowing landlords to move to a market rent level once a unit is vacant will give them greater incentive to keep their buildings sound, in good repair and attractive.

There will always be some landlords who do not keep their buildings properly maintained. The following changes will help property standards officers enforce proper maintenance of all buildings:

- The violation of a property standard will be made an offence. Currently, owners cannot be charged simply for violating a property standard, only for refusing to comply with a work order. This change would mean that owners of sub-standard properties could be charged or ticketed on the spot. Officers will now be able to obtain a search warrant where entry into a dwelling is refused but there is reason to believe sub-standard conditions exist. Currently, warrants can only be issued to investigate non-compliance with a work order.
- The requirement that a notice of violation be issued prior to a work order will be removed. Removing this step would allow work orders to be issued requiring that a property be repaired as soon as a problem is identified. An informal warning could still be given prior to issuing a work order.
- Notice requirements placed on property standards officers will be streamlined. Officers could decide who, in addition to the owner, should receive a work order. For example, it may not be necessary to notify a mortgage holder in a case involving unkept grass. Currently, anyone who is registered on title must be notified.
- Property standards officers will be given more powers, including the authority to have a property inspected by a qualified expert (e.g., a structural engineer) when an owner does not provide sufficient information.
- Maximum fines will be increased. Maximums for individuals would be \$25,000 for a first offence and \$50,000 for subsequent offences. For corporations, these maximums would be \$50,000 for a first offence and \$100,000 for subsequent offences.
- Provincial courts will be given the power to issue prohibition orders. These orders can prohibit a landlord convicted of a property standards offence from repeating the offence. Non-compliance with orders can lead to additional fines or imprisonment. This will streamline enforcement by enabling municipalities to apply for a prohibition order at the same time that an individual or corporation is convicted.
- A municipality's ability to recover costs will be improved. Currently, municipalities may experience difficulty in recovering from owners the costs of doing remedial work (e.g. emergency repairs) or of conducting inspections of properties. This change would make the recovery of the monies owed more certain by treating them as municipal taxes or allowing the municipality to place a priority lien on the property involved.

With the proposed changes, property standards officers will have a much greater ability to make sure standards are met and that penalties given to

serious violators are both more significant and more immediate. The province will no longer duplicate municipal enforcement in this area and will no longer issue Orders Prohibiting Rent Increases (OPRIs), which are not compatible with the new tenant-protection system.

The province will continue to have maintenance standards for rental buildings in unorganized territories and in municipalities without property standards by-laws. The province will continue to enforce these standards and will issue work orders directly, recovering costs from these municipalities.

Other Issues for Discussion

Should the province have the power to inspect for compliance with standards where a municipality has a property standards by-law, but does not enforce it?

Should there be a requirement that owners be notified in the event of a tenant-initiated inspection, prior to a work order being issued or charges being laid, so that owners have a chance to fix the problem?

Are there any other measures that could improve municipal property standards enforcement?

The Landlord & Tenant Act

Both landlords and tenants say the current process for resolving disputes is too complex and too lengthy. Since most disputes wind up in court, the system is expensive for landlords and tenants who have trouble dealing with the system without lawyers, and for taxpayers who finance the costly court process.

The proposed tenant-protection package will

- give tenants security of tenure while protecting their rights
- give both the landlord and tenant improved ability to enforce their rights
- define responsibilities of both landlords and tenants to reduce disputes

Many requirements of the current legislation work well — and will remain unchanged. These include

- grounds for eviction (except for unauthorized sublets as noted below)
- notice periods for termination of tenancy
- prohibition against taking security deposits except for last month's rent
- prohibition against seizing tenants' property for arrears of rent

- landlords' duty to maintain rented premises
- tenants' right to privacy

Several changes have been proposed to the Act that will address gaps or inequities in the current legislation. Other changes are required to give full effect to proposed new policies.

Sublets (or assignment of lease)

To avoid the possibility that a sublease might infringe on the landlord's right to charge an appropriate rent where the sublet is not approved

- tenants will be allowed to sublet only with the landlord's permission
- landlords can withhold permission if they have reasonable cause
- landlords can apply to evict unauthorized tenants

Abandoned property

The current legislation is silent on a landlord's responsibility to tenants for any abandoned property left by them. This will be clarified under the new legislation as follows:

- when personal property is left behind and it is unclear whether or not the tenant has moved out, the landlord can obtain a writ of possession and dispose of the tenant's property after 30 days
- if the tenant comes back to claim the property before 30 days have elapsed, the landlord can recover storage costs

Sale of single-family dwelling

Although not in the current legislation, the courts have said a landlord who sells a rented, single-family dwelling can give the tenant 60 days' notice of termination at the end of the term on behalf of the buyer when the agreement for purchase and sale is finalized. The legislation will be updated so it says this explicitly.

Privacy

All tenants are entitled to privacy in their rented unit. Current provisions in the legislation are widely misunderstood and need to be clarified. The landlord will be allowed to enter the unit only

- for specific reasons and only during specified periods of time (ie. between 8 a.m. and 8 p.m.)
- on 24 hours' notice given in writing

These conditions apply at all times except

- in emergencies
- when the tenant agrees at the time of entry
- after the tenant has given notice of termination, when the landlord needs to show the unit to prospective tenants
- where the tenancy agreement requires the landlord to clean the unit at regular intervals

Harassment

All tenants are entitled to live in their rented unit free from any harassment or interference from the landlord. The new legislation will contain strict controls to protect tenants

- An enforcement unit will be established to investigate tenant complaints of harassment.
- Tenant applications for relief of harassment will be fast-tracked.
- Maximum fines for harassment will be increased to \$10,000 for individual landlords and \$50,000 for corporations.
- Rent reduction applications for harassment will now be allowed.

Other Issues for Discussion

When should landlords have to pay interest on the last month's rent deposit? And how much interest should they pay?

Tenants may not withhold the rent they owe when they have a dispute with their landlord. How can this rule be enforced? What role should a tribunal play in these circumstances?

Are there any other remedies which could be granted on a tenant application dealing with harassment, such as a restraining order?

Example

Scott, a landlord, wants to force his tenant Janet to leave so he can jack up the rent. So he harasses her — perhaps by turning off the heat or making excessive noise. Janet contacts the enforcement unit and requests assistance. The enforcement unit intervenes to prevent further harassment and then initiates a prosecution. If Scott is prosecuted, he can be fined up to \$10,000. A corporation can be fined \$50,000. Janet can also file for a reduction of rent.

The dispute-resolution system

The government is proposing to create a new dispute-resolution system independent of the courts to adjudicate both rent control matters and other landlord and tenant matters. It will deal with rent increases and rent decreases, illegal charges, termination of tenancies, rent rebates and abatements of rent, and maintenance provisions.

Currently, rent control and other landlord and tenant disputes are resolved through two separate systems, independent of each other. Rent control issues are settled through a program of the Ministry of Municipal Affairs and Housing. Provincial courts handle other landlord and tenant disputes.

Example

Celine is very aggressive, anti-social and noisy, making life miserable for both her landlord and other tenants. In the new system the time it takes to remove a tenant will be shortened considerably. Currently, it can take up to five months to evict a problem tenant through the court system.

A dual system for resolving issues is too complex, too confusing, and too inefficient. The overlap and duplication in the system makes it difficult to use for tenants and expensive for taxpayers. In addition, processes for handling disputes under both systems are too slow and too complex. For example, there have been cases where it has taken several years to resolve issues, resulting in retroactive rent increases for tenants amounting to thousands of dollars.

The reforms are expected to

- ensure quick, efficient and fair decisions
- secure a high standard of procedural fairness
- reduce cost and administrative complexity through a one-window access

The ministry has not yet developed a proposal for the new dispute-resolution system. Options have been presented in the various parts of this section. Input is welcomed.

Other Issues for Discussion

Relationship between dispute resolution system and government

There are two ways the program delivery system can be set up. The issue is whether the delivery system should be part of government or arms-length. More specifically, the options are

- an agency independent of the ministry but subject to government policy and legislation
- a provincial government administration with direct accountability through a ministry

Appointment of Adjudicators

There are a number of different ways that decision-makers could be chosen.

- Appointment by Order in Council, subject to approval by the Lieutenant Governor. This appointment process is generally used to staff high profile, publicly accountable agencies. The process can be competitive or selective and may involve qualification criteria.
- A public tender in which potential bidders would have to meet qualification criteria. Decision-makers would be paid a fee for their services.
- Appointment of government employees through a regular competitive process.

Dispute-resolution process

- mediation

Front-line mediation could be introduced as a way to resolve disputes prior to adjudication. The mediator does not make decisions, but works informally with both parties to clarify issues, discuss options and work towards a mutually acceptable solution.

- default

Currently, when an application is not disputed, a court official (i.e. Registrar) can award a default judgement. In a revised system, the role and powers of the Registrar could be enhanced beyond awarding default judgements or, alternatively, could be eliminated completely.

Appeals

Both landlords and tenants are entitled to appeal the decision of an adjudicator. The following are some appeal system options:

- internal appeal
 - a two-tiered system in which the second level hears appeals to orders and decisions issued at the first level
 - a single-tier system which only allows reconsiderations for serious error and the power to amend an order based on clerical error or omission.
- appeal to the courts
 - appeal to Divisional Court on matters of law only
 - appeal to Divisional Court on matters of fact and law
 - appeal to Ontario Court (General Division) for a complete rehearing of the case

Public Access and Efficiency

Effective public participation in the decision-making process depends on ease of access. This must be balanced with cost-effectiveness.

Ontario has 50 local courts (General Division) and 20 rent control offices which are potentially available to provide services. Participants could be served from single-function, full-service offices with fewer locations or from multiple-service offices with more locations handling the affairs of many agencies, including tenant-protection activities.

Application fees could provide some cost-recovery and would help limit frivolous applications.

Other Issues for Discussion

Are there any circumstances where arbitrators should be used instead of adjudicators?

What are the minimum qualifications for an adjudicator? What should the term of appointment be for an adjudicator? Should adjudicators be bound by a code of ethics? What should be the size of the panel that hears each application?

How much should application fees be, and who should pay them?

Should costs be awarded?

How should the system deal with errors and complaints?

Security of tenure and conversions

The *Rental Housing Protection Act* (RHPA) was introduced in 1986 in an attempt to prevent the loss of rental housing stock through conversion to other uses, demolitions and renovations. The Act requires municipal approval for conversions, demolitions and renovations, with approval criteria set out by the province.

Unfortunately, the Act has become a major barrier for many building owners who want to significantly improve the quality of their buildings, or who want to make better use of the land their building is on. In some cases, owners have boarded up their buildings because the legislation will not allow them to feasibly redevelop their sites.

Conversions can provide affordable home ownership opportunities for tenants. The current Act makes conversions difficult, even if all tenants and the landlord are in favour.

Given the age of Ontario's rental stock, and its condition in many cases, major renovation or redevelopment should not be discouraged. In addition, the density of development for many older buildings may not reflect the changes to the neighbourhood over the past few decades.

At the same time, tenants who live in these buildings need protection when changes happen in their building.

The following are the main components of rental housing protection contained in the proposed tenant- protection package:

- the focus of protection will change from protecting the unit to protecting the sitting tenants
- demolitions, major renovations, and conversions of rental buildings to condominiums or cooperatives will no longer require municipal approval

- sitting tenants will be given an extended tenure
- sitting tenants will have the right of first refusal to purchase their units in the case of conversion

Other Issues for Discussion

What should be the extended tenure for existing tenants for conversions? Demolitions? Renovations?

Should majority tenant approval be required for conversions?

Are there alternatives to extended tenure, such as compensation?

Care homes

Residents in care homes have unique needs and their relationship with caregivers often has to be different than a typical landlord-tenant relationship. The current legislation does not recognize that special rules are needed for care homes, and in some circumstances it has affected the quality of care.

The new tenant-protection legislation will cover care home residents and give them the consumer protection they need as tenants, while recognizing their particular needs, that is, care services to help them with the activities of daily living.

The following points are the main care-home elements of the proposed tenant-protection package:

Rights of residents

Care home residents will continue to be entitled to

- provisions such as security of tenure and privacy outlined in other sections of this document
- written tenancy agreements
- information packages about facilities and services offered.
- rent control for accommodation, but not for care services or meals

In addition, residents will be entitled to give only 30 days' notice of termination of tenancy if the tenancy has not ended voluntarily (e.g. if the resident requires a higher level of care)

Example

Pierre, a care home resident, has a serious heart problem and wishes to have staff look in on him at night. The current law prohibits this. Under the new law, a care home resident and operator can agree to bed checks — and Pierre will receive an appropriate level of care.

Rights of operators

Care home operators will be entitled to

- enter residents' units without notice to provide care or perform bed checks if this is agreed to by the tenant
- transfer residents to alternative facilities when the level of care needs change, subject to appropriate protections
- fast-track eviction cases for residents who pose a threat to other residents
- convert, renovate or demolish facilities as they see fit, on condition that they find alternative, comparable accommodation for residents

Example

Nalini, a care home resident, has deteriorating health and needs to be moved to another care facility. Currently, Nalini has to give 60 days notice to move. Under the new law, she will only have to give 30 days.

Short-stay facilities

Facilities that offer temporary accommodation for therapeutic and rehabilitation reasons, such as second-stage shelters and drug rehabilitation centres, will be exempt from the new legislation.

Other Issues for Discussion

Should there be a formal process for transferring a resident of a care home to another facility? What should the transfer process be? How can residents be assured of getting the right kind of alternate accommodation?

Mobile home parks and land lease communities

Mobile home parks and land lease communities have unique characteristics and have distinct operating circumstances. Tenants already receive the same protection as tenants in other rental accommodation, but the legislation doesn't recognize that special maintenance and operating provisions are needed.

The new tenant-protection package will be designed to recognize mobile homes and land lease homes as affordable ownership housing while providing residents with the rights and consumer protection they need as tenants.

The following points are the main mobile home park/land lease community elements of the proposed tenant-protection package:

- tenants will continue to be protected by provisions such as security of tenure and privacy outlined in other sections of the document

- tenants will receive rent control protection, but landlords will be eligible for a *higher* cost-pass-through allowance for capital expenditures when a public agency requires infrastructure upgrades (e.g., water and sewer systems)

- tenants and landlords will **continue** to have rights and responsibilities specific to the land-lease arrangement

for tenants this includes

- the right to sell or lease their home
- the right to purchase whatever goods and services they choose
- the obligation to maintain their homes

for landlords this includes

- the obligation not to charge unreasonable installation or other fees
- the obligation to maintain the infrastructure and grounds of the park or community

- new rights and responsibilities specific to the land-lease arrangement will include

- the landlord's obligation to maintain a publicly accessible bulletin board to display "For Sale" signs, or allow tenants to display "For Sale" signs in the windows of their homes
- the right for a landlord to remove abandoned homes and their contents from the property after 60 days with a writ of possession, if the owner cannot be contacted by registered mail or other reasonable means, and if proper notice has been published in a newspaper of general distribution.

Other Issues for Discussion

What cap should be placed on the special cost-pass-through provisions for capital expenditures required by a public agency?

Appendix

There are an estimated 3.2 million housing units in Ontario of which approximately 1.3 million (36 per cent) are rented.

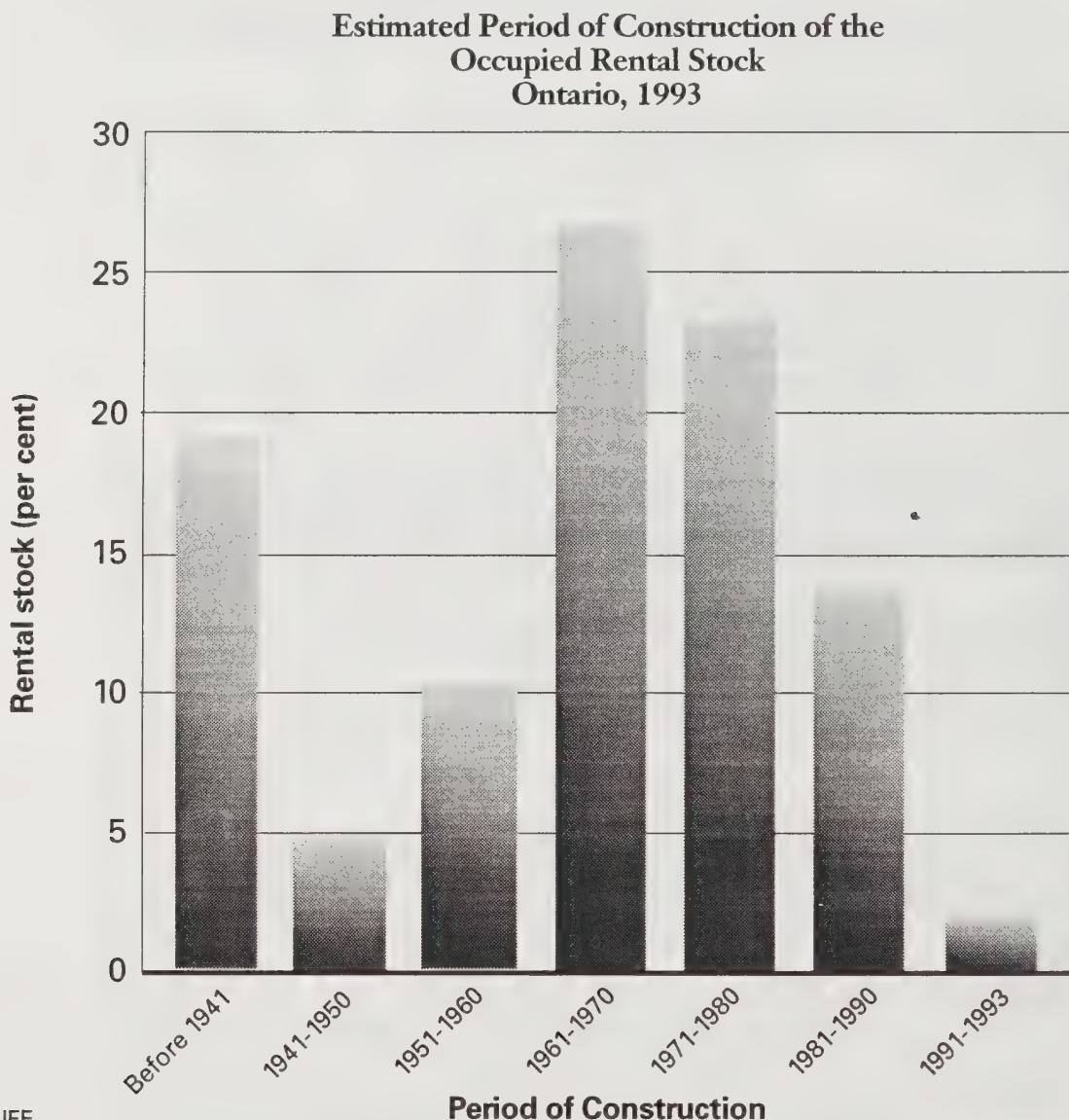
Rental Housing Stock is Aging

Approximately 800,000 (60 per cent) of the rental dwellings are more than 20 years old.

Approximately, one-in-four rental units was built before 1950. There were a large number of rental units constructed in the 1960s and 1970s. This accounts for half of the rental stock. The low level of rental starts in the 1980s and 1990s is reflected in the fact that only 16 per cent of the rental stock was built during this period.

Figure 1 shows the period of construction for Ontario's rental stock.

Figure 1:



Source: Statistics Canada, 1993 HIFE

The older the stock, the greater the need for capital repair. The relationship between need for repair and age increases with age of the rental stock. The Fair Rental Policy Organization (FRPO) has estimated that there is a need for \$10 billion in repairs to the existing rental stock.

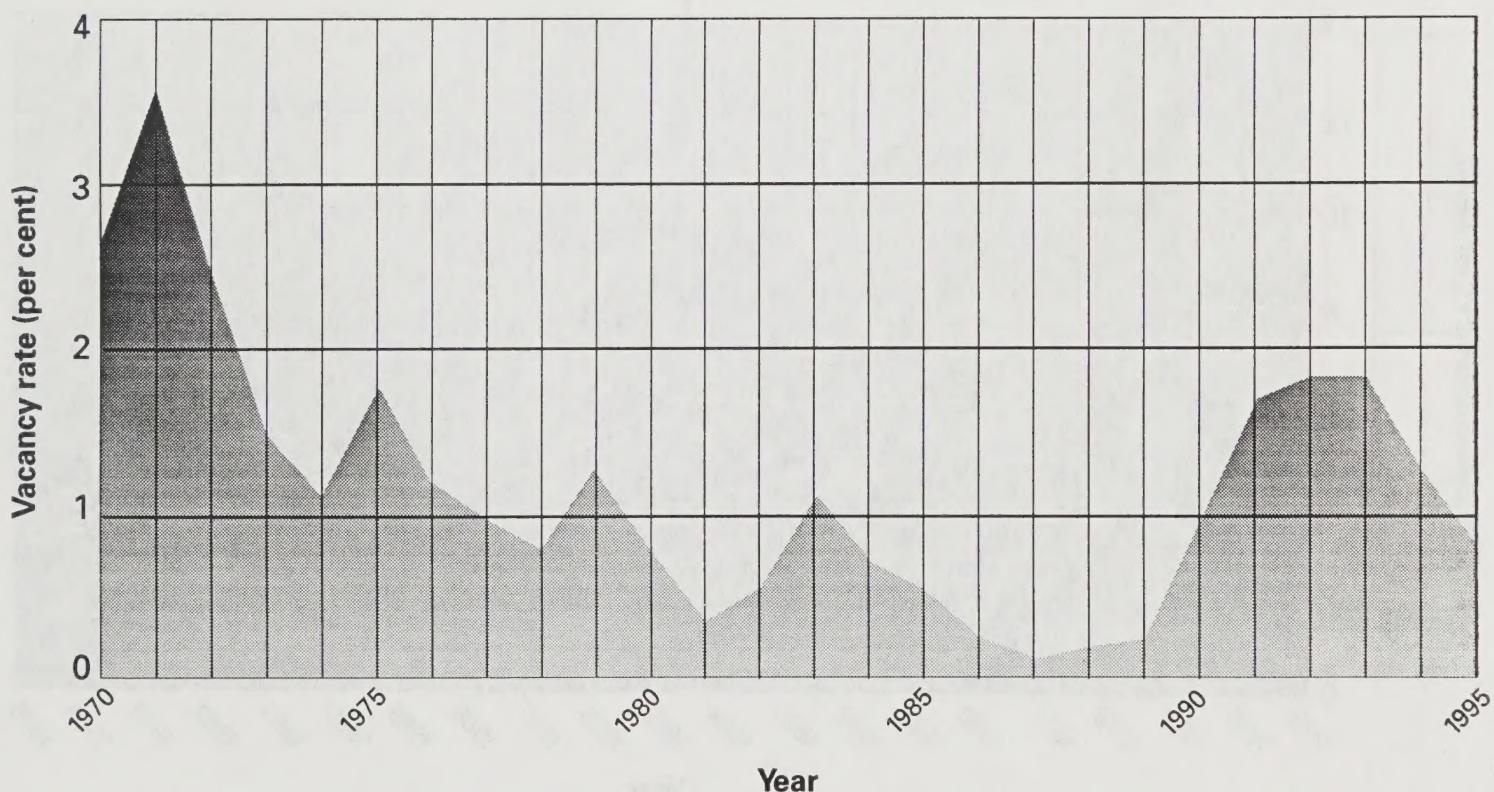
Vacancy Rates

The rental market is tightening in some of the major centres in Ontario. In general, vacancy rates range from a low of 0.8 per cent in Toronto to a high of 6.4 per cent in Thunder Bay.

In Toronto the vacancy rate has declined from a peak of 1.8 per cent in 1992-1993. This peak was a result of excess supply of condominiums and high volume of non-profit housing at that time. Figure 2 shows the 1970 to 1995 vacancy rates in Toronto, for private rental structures of six plus units.

Figure 2:

Private Rental Apartment Vacancy Rates Toronto CMA, 1970-1995 Structures of Six or More Units



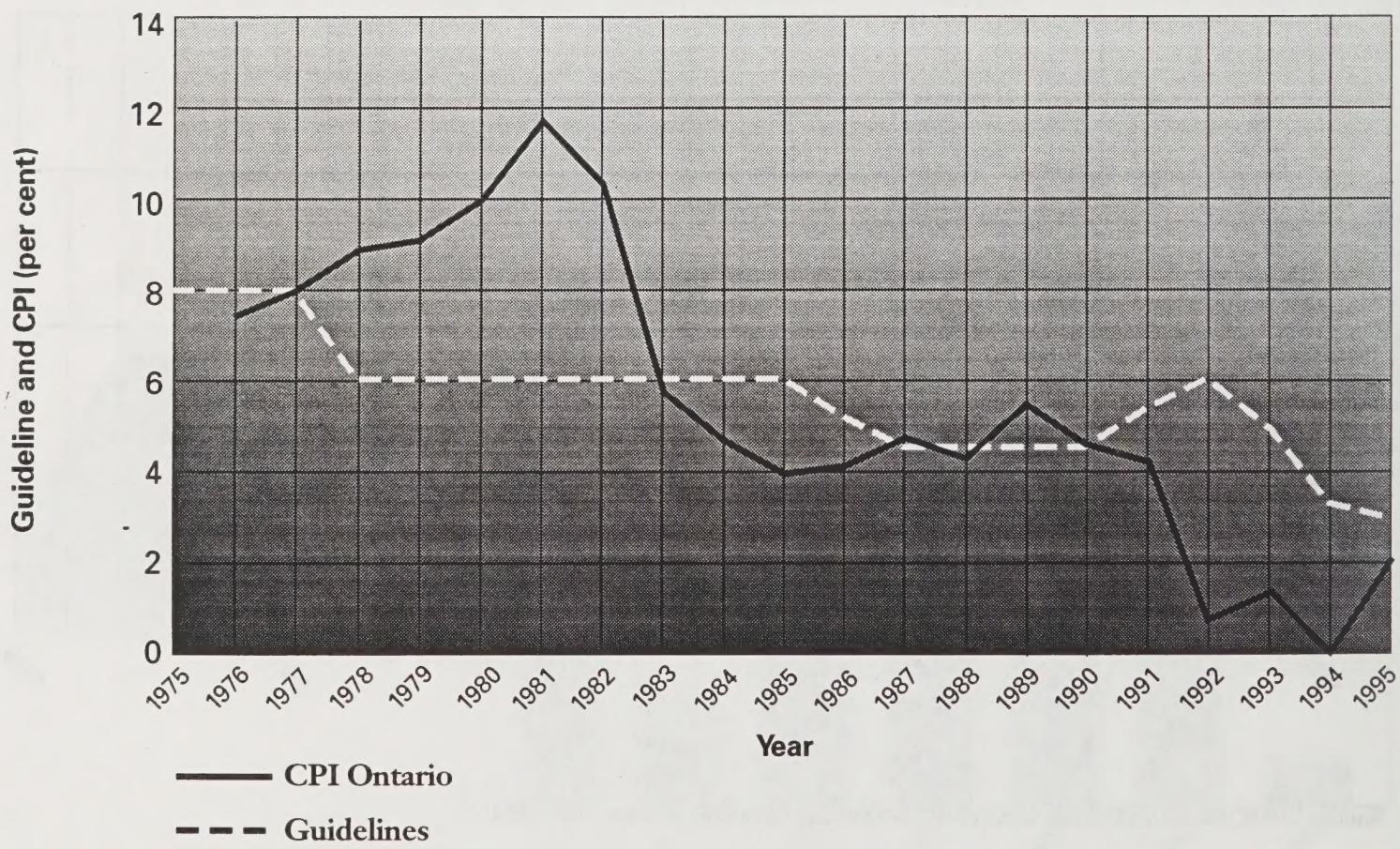
Source: CHMC; Based on October surveys (1975-1995) and December surveys (1970-1974)

Rent Increases and Inflation

Overall, the impact of rent control regimes has been to smooth out the impact of inflation on rent increases. Figure 3 below compares the rent control guideline with the consumer price index (CPI) from 1975 onwards.

Figure 3:

Comparison of Guideline and CPI
1975-1995



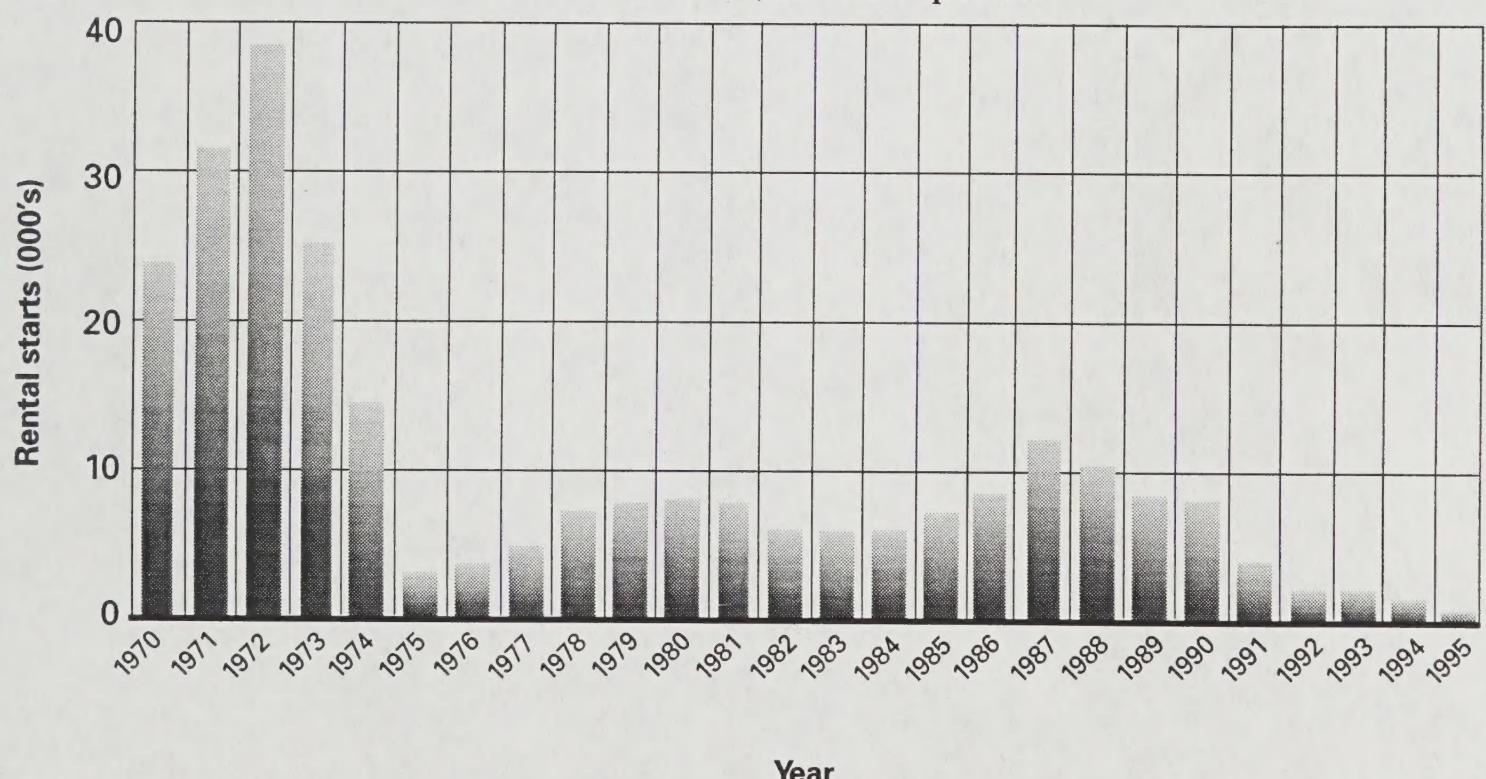
Source: Statistics Canada, HIFE & Ontario Ministry of Municipal Affairs & Housing

Rental Dwelling Starts

Over the past two decades, market rental housing starts in Ontario have decreased substantially. From an average of over 27,000 rental dwelling starts annually in the early 1970s (1970 to 1974), new private rental construction has fallen to an average of less than 2,000 units annually in the past few years (1991 to 1995). Figure 4 shows the dramatic fall in the construction of private rental units.

Figure 4:

Private Rental Starts, Ontario, 1970-1995
All Areas of 10,000 Plus Population



Source: Ministry of Municipal Affairs and Housing

Based on CMHC surveys of starts, plus earlier estimates from the Thom Commission Staff, and Smith Smith and Thomlinson (1981, AREUEA Journal)

